



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

May 12, 1948

**Hon. C. H. Cavness
State Auditor
Austin, Texas**

Opinion No. V-569

**Re: Eligibility of employees
of various conservation
and reclamation districts
to be members of the Em-
ployees Retirement Sys-
tem of Texas.**

Dear Mr. Cavness:

**Your request for an opinion on the above sub-
ject is as follows:**

**"We shall greatly appreciate your opin-
ion as to whether the employees of each (separ-
ately) of the following are eligible for mem-
bership in the Employees Retirement System of
Texas:**

**Bexar County Metropolitan Water Dis-
trict
Brazos River Conservation and Recla-
mation District
Central Colorado River Authority
Comal County Water Recreational Dis-
trict No. 1
Colorado County Flood Control Dis-
trict
Dallas County Flood Control District
Dallas County Park Cities Water Con-
trol and Improvement District No.2
Fayette County Flood Control District
Guadalupe-Blanco River Authority
Guadalupe River Authority
Gulf Water Supply District
Harris County Flood Control District
Jackson County Flood Control District
Lavaca County Flood Control District
Lower Colorado River Authority
Lower Concho River Water and Soil
Conservation Authority
Lower Rio Grande Flood Control Dis-**

trict
Leon River Flood Control District
Lower Neches Valley Authority
Nueces River Conservation and Re-
clamation District
Panhandle Water Conservation Auth-
ority
Pease River Flood Control District
Sabine-Neches Conservation District
San Jacinto River Conservation and
Reclamation District
San Antonio River Canal and Conser-
vancy District
Sulphur River Conservation and Re-
clamation District
Upper Colorado River Authority
Upper Guadalupe River Authority
Upper Red River Flood Control and
Irrigation District
Valley Conservation and Reclamation
District
Webb County Conservation and Recla-
mation District."

Article XVI, Section 59, Subdivisions (a) and
(b), Constitution of Texas, provide as follows:

"Sec. 59. (a) The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclama- tion and irrigation of its arid, semi-arid and other lands needing irrigation, the re- clamation and drainage of its over-flowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the naviga- tion of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

"(b) There may be created within the State of Texas, or the State may be divided

into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law."

Article 8194, V. C. S., reads as follows:

"Conservation and reclamation districts may be created and organized in any manner that water improvement, drainage, or levee improvement districts are authorized by the laws of this State to be created, and for the several purposes therein provided."

The Vernon Law Book Company has assembled in the last part of Chapter 8, Title 128, Vernon's Annotated Civil Statutes, and following Article 8197f, under a heading entitled "Water Supply and Control", the Acts of the Legislature creating the above listed conservation and reclamation districts. Authority for all of them stems from Article XVI, Section 59, Constitution of Texas, and the various Acts creating them borrow certain language from this constitutional provision by reciting that "... such district shall be and is hereby declared to be a governmental agency and body politic and corporate ...". As the conservation and reclamation districts under scrutiny in this opinion are all authorized by the same constitutional authority and an examination of each of the separate Acts creating them discloses a similarity in language describing their legal entity and general powers, we shall consider all thirty-one districts collectively.

"Drainage districts created under the provisions of Title 128, ch. 7, Art. 8097, V. A. C. S., enacted under authority of Art. XVI, Sec. 59(a), Constitution of Texas, are political subdivisions of the State of the same nature and stand upon exactly the same footing as counties or precincts, or any of the other political subdivisions of the State." Jones v. Jefferson County Drainage District, 139 S.W.(2d) 861, citing numerous cases for

the above statement.

"Irrigation districts, navigation districts, levee and improvement districts, and like political subdivisions created under Sec. 59(a), Art. XVI, Constitution of Texas, and statutes enacted thereunder carrying out the purposes of such constitutional provisions, are not classed with municipal corporations, but are held to be political subdivisions of the State performing governmental functions, and standing upon the same footing as counties and other political subdivisions established by law." Willacy County Water Control and Improvement District No. 1. v. Abendroth, 177 S.W.(2d) 936, 937, citing numerous cases.

The Austin Court of Civil Appeals in Lower Colorado River Authority v. Chemical Bank and Trust Company, 185 S.W.(2d) 461, later affirmed by the Supreme Court, described the Lower Colorado River Authority in these terms:

"While designated and classified as a governmental agency and body politic and corporate, the Authority's functions and activities partake in large measure, the nature and characteristics, within legislative restrictions, of a large industrial enterprise rather than of a strictly governmental function. It has no power to levy taxes, enact laws nor ordinances, as a city has; and its efficient functioning depends in large measure on the sound judgment and good business management of its Board of Directors. They have large control over the operation of its properties, and the income to be derived therefrom, which constitute the only source of revenue to meet its obligations. . ."

"Department" and "employee" as used in the Employees Retirement Act are defined in Section 1 thereof as follows:

"B. 'Department' shall mean any department, commission, institution or

agency of the State Government.

"C. 'Employee' shall mean any regularly appointed officer or employee in a department of the State who is employed on a basis or in a position normally requiring not less than nine hundred (900) hours per year, but shall not include members of the State Legislature or any incumbent of an office normally filled by vote of the people; nor persons on piece-work basis; nor operators of equipment or drivers of teams whose wages are included in rental rate paid the owners of said equipment or team; nor any person who is covered by the Teacher Retirement System of the State of Texas or any retirement system supported with State funds other than the Texas Employees Retirement System." (Emphasis ours)

The Lower Colorado River Authority has been held to be an agency of the State. *L.C.R.A. v. McCraw*, 83 S.W.(2d) 629 (1935); *L.C.R.A. v. Chemical Bank and Trust Co.*, 190 S.W.(2d) 48 (1945). And the employees of that body politic have been held State employees for certain purposes. However, notwithstanding the broad definitions in the Employees Retirement System Act of the words "department" and "employee," we believe that construing the Act as a whole, this and similar agencies and their employees were not intended to be covered by the Retirement Act for the reasons that the 50th Legislature contemplated only those "employees of the State" whose duties relate to state-wide activities with no intervening corporate entity or body between the State and the employee. In the case of conservation and reclamation districts the district is the employer much the same as counties are the employers of its employees and have control of their duties. The district controls the working hours of its employees and is responsible for the compensation due its employees.

The following quotation taken from *Dillman v. State*, 125 P. 367, 378, is appropriate in drawing the distinction between strictly State officers and officers of political subdivisions created by the State, and is in line with the distinction we draw here between State employees within the meaning of the Retirement Act and employees of the conservation and reclamation districts

named in your request:

"In general, it may be said that a State officer is one whose duties and powers are coextensive with the state, while a county officer is one whose duties and powers are coextensive with the county. State officers are those whose duties concern the state at large, or the general public, although exercised within definite limits, and to whom are delegated the exercise of a portion of the sovereign power of the state. They are in a general sense those whose duties and powers are coextensive with the state, or are not limited to any political subdivision of the state, and are thus distinguished from municipal officers strictly, whose functions relate exclusively to the particular municipality, and from county, city, town, and school district officers."

In former opinion No. 0-6928 this office followed the holding of the court in *Wallacy County Water Control and Improvement District No. 1 v. Abendroth*, supra, and *L. C. R. A. v. Chemical Bank and Trust Company*, supra, by declaring that the Lower Colorado River Authority employees were employees of a state agency and political subdivision of the State and were within a statutory exception to the Texas Unemployment Compensation Act. This exception excluded "service performed in the employ of this State, or any political subdivision thereof, or any instrumentality of this State or its political subdivisions."

In discussing the effect of a member of the Legislature accepting employment with a River Authority this office in former opinion No. 0-6578 treated River Authority employment as employment by the State within the prohibition of Sec. 33, Art. XVI, Constitution of Texas, denying payment of compensation from the State Treasury to a person "who holds at the same time any other office or position of honor, trust or profit, under this State. . ."

In former Opinion No. V-462 this office was of the opinion that a director of the Lower Neches Valley Authority was a civil officer of this State and can serve at the same time as a director of Texas A. & M.

College although he must do so without compensation from the State for either office.

We adhere to these former opinions and point them out for the sake of avoiding any confusion with the reasoning and conclusion of this opinion. We distinguish between the definitions of "state employee" as used in these opinions and those who are within the meaning of the Employees Retirement Act.

We note here that from reading Lower Colorado River Authority v. Chemical Bank and Trust Co., supra, the L. C. R. A. apparently has its own retirement system. In any event, the employees of this particular district would be precluded from membership in the system afforded by H. B. 168, by reason of Section 1.C., of H. B. 168 which defines "employee".

We are, therefore, of the opinion that the employees of the conservation and reclamation districts named in your request are not eligible for membership in the Employees Retirement System of Texas.

SUMMARY

The employees of the conservation and reclamation districts created by Acts of the Legislature codified under Chapter 8, Title 128, V. C. S., are not eligible for membership in the Employees Retirement System of Texas under the provisions of the present Act, Art. 6228a, V. C. S.

Yours very truly,

APPROVED:

Rice Daniel
ATTORNEY GENERAL

JTB:mw

ATTORNEY GENERAL OF TEXAS

By

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